



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-904]

Certain Activated Carbon from the People's Republic of China: Notice of Court Decision Not in Harmony with the Results of Antidumping Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 11, 2021, the Court of International Trade (CIT) issued its final judgment in *Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232, sustaining the Department of Commerce's (Commerce's) second remand results pertaining to the tenth administrative review of the antidumping duty (AD) order on certain activated carbon from the People's Republic of China (China) covering the period of April 1, 2016, through March 31, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Carbon Activated Tianjin Co., Ltd. (Carbon Activated) and Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (GHC).

DATES: Applicable May 21, 2021.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0339.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 2018, Commerce published its *Final Results* in the 2016-2017 AD administrative review of certain activated carbon from China.¹ Commerce calculated a weighted-average dumping margin of 0.00 U.S. dollars (USD)/kilogram (kg) for Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang) and a weighted-average dumping margin of 0.45 USD/kg for Carbon Activated, and assigned GHC a separate rate of 0.45 USD/kg.²

After correcting ministerial errors contained in the *Final Results*, on November 19, 2018, Commerce published the *Amended Final Results*. Commerce calculated a weighted-average dumping margin of 0.00 USD/kg for Datong Juqiang and a weighted-average dumping margin of 0.23 USD/kg for Carbon Activated, and assigned GHC a separate rate of 0.23 USD/kg.³

Carbon Activated, Datong Juqiang, and GHC (collectively, the Respondents) appealed Commerce's *Final Results/Amended Final Results*. On May 13, 2020, the CIT remanded the *Final Results/Amended Final Results* to Commerce, and directed Commerce to reconsider Commerce's determination to include the imports from France and Japan in the Thai import data used to value the mandatory respondents' (*i.e.*, Carbon Activated and Datong Juqiang) carbonized material input, and also to reconsider Commerce's adjustments to the surrogate financial ratios.⁴

In its first remand redetermination, issued in August 2020, Commerce (1) reconsidered and further explained Commerce's determination to include the French and Japanese import data in the Thai import data used to value carbonized material in the *Final Results*; and (2) reconsidered and further explained Commerce's allocation of certain line items in valuing financial ratios using the 2016 financial statements from the Romanian company, Romcarbon SA

¹ See *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53214 (October 22, 2018) (*Final Results*).

² *Id.*

³ See *Certain Activated Carbon from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 58229 (November 19, 2018) (*Amended Final Results*).

⁴ See *Calgon Carbon Corporation et al. v. United States*, 443 F. Supp. 3d. 1334 (CIT 2020).

(Romcarbon).⁵ Specifically, Commerce excluded the imports from Japan from the Thai import data and continued to include the imports from France. In addition, Commerce made necessary changes in the allocation of certain line items in calculating the financial ratios using the 2016 financial statements from Romcarbon. Accordingly, Commerce made changes to the margin calculations for the mandatory respondents and revised the separate rate for GHC.⁶ On December 21, 2020, the CIT remanded for a second time, and directed Commerce to again reconsider Commerce’s inclusion of the imports from France in the Thai surrogate value for carbonized material.⁷

In its second remand redetermination, issued in March 2021, Commerce reconsidered its determination to include the imports from France in the Thai import data used to value carbonized material and, under protest, excluded the imports from France from the Thai surrogate value for carbonized material. Accordingly, Commerce made necessary changes to the margin calculations for the mandatory respondents and revised the separate rate for GHC.⁸ The CIT sustained Commerce’s final redetermination.⁹

Timken Notice

In its decision in *Timken*,¹⁰ as clarified by *Diamond Sawblades*,¹¹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(a) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive”

⁵ See *Final Results of Redetermination Pursuant to Court Remand, Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232, Slip Op. 20-65, dated August 4, 2020, available at <https://enforcement.trade.gov/remands/20-65.pdf>.

⁶ *Id.* at 1-3, 23-25.

⁷ See *Calgon Carbon Corporation et al. v. United States*, 487 F. Supp. 3d 1359 (CIT 2020).

⁸ See *Final Results of Redetermination Pursuant to Court Remand, Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232, Slip Op. 20-187, dated March 16, 2021, available at <https://enforcement.trade.gov/remands/20-187.pdf> (*Second Final Results of Redetermination*) at 1-2, 18-19.

Commerce notes that although Datong Juqiang participated in the litigation, in the *Second Final Results of Redetermination*, subsequently sustained by the CIT, Datong Juqiang’s rate remained unchanged from the *Amended Final Results* at 0.00 USD/kg.

⁹ See *Calgon Carbon Corporation et al. v. United States*, Consol. Court No. 18-00232, Slip Op. 21-58 (CIT May 11, 2021).

¹⁰ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹¹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

court decision. The CIT's May 11, 2021 judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results/Amended Final Results*. Thus, this notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Results

Because there is now a final court decision, Commerce amends the *Final Results* and *Amended Final Results* with respect to Carbon Activated and GHC as follows:¹²

Exporters	Weighted-average dumping margin (USD/kg) ¹³
Carbon Activated Tianjin Co., Ltd.	0.00
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.	0.00

Cash Deposit Requirements

Because Carbon Activated and GHC have superseding cash deposit rates, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and exported by Carbon Activated, Datong Juqiang, or GHC, and were entered, or withdrawn from warehouse, for consumption during the period April 1, 2016, through March 31, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to liquidate without regard to

¹² Commerce notes that Datong Juqiang's rate remains unchanged from the *Amended Final Results* at 0.00 USD/kg.

¹³ In the second administrative review, Commerce determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. See *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208, 70211 (November 17, 2010); see also *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015), at 61174 n.21.

antidumping duties unliquidated entries of subject merchandise produced and exported by Carbon Activated, Datong Juqiang, and GHC in accordance with 19 CFR 351.212(b).¹⁴ For all other enjoined entries of subject merchandise from companies other than those specified above, we will instruct CBP to assess antidumping duties on all appropriate entries consistent with the *Final Results/Amended Final Results*.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: May 17, 2021.

Christian Marsh,

Acting Assistant Secretary

for Enforcement and Compliance.

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¹⁴ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012); see also 19 CFR 351.106(c)(2).